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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-100141-07
Date:
December 19, 2007

LEGEND

X =A =

State =

D1 =

Dear _____ :

This letter responds to a letter dated December 27, 2006, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X's sole shareholder, A, purchased 100% of the stock of X on D1, and intended for X to be an S corporation as of D1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely. X represents that X has acted consistently with X's intended status as an S corporation.

X requests a ruling that it will be recognized as an S corporation effective D1.

LAW

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that such election may be made for any taxable year at any time during the preceding taxable year or at any time during the taxable year and on or before the 15th day of the third month of the taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362 for making such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to make such election, then the Secretary may treat such an election as timely made for such taxable year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center within 60 days following the date of this letter a completed Form 2553 containing an effective date of D1, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: